



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2017-0006]

Little Creek Harbor, Fisherman's Cove, Joint Expeditionary Base Little Creek-Fort Story, Little Creek, Virginia, Restricted Areas.

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to establish a restricted area in the waters of Fisherman's Cove and Little Creek Harbor at Joint

Expeditionary Base Little Creek-Fort Story, Little Creek (JEBLCFS) in Virginia

Beach, Virginia. JEBLCFS is the homeport of numerous ships, small boats and

special operational units. The proposed amendment is necessary to better

protect vessels and personnel assigned to JEBLCFS by implementing a

waterside security program. The proposed amendment establishes the restricted

area waters within the boundaries of the existing installation and in the entry

channel into the harbor.

DATES: Written comments must be submitted on or before [INSERT DATE 30

DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-

2017-0006, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil) . Include the docket number, COE-2017-0006, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2017-0006. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov> , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your

comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov) . All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7122.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing amendments to regulations in 33 CFR Part 334 for the establishment of new a restricted area in the waters of Fisherman's Cove and Little Creek at JEBLCFS in Virginia Beach, Virginia. In a memorandum dated May 1, 2017, the Department of the Navy requested that the Corps modify 33 CFR 334 to establish a permanent restricted area. The proposed amendment is necessary to better protect vessels and personnel assigned to JEBLCFS by

implementing a waterside security program. The request is in response to the possible risks associated with the potential for unfettered access to the harbor and the close proximity of a civilian marina to naval assets. The proposed amendment establishes the restricted area in waters within the boundary of the existing installation and in the entry channel into the harbor.

#### Procedural Requirements

##### a. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps has made a determination this proposed rule is not a significant regulatory action. This regulatory action determination is based on the proposed rules governing the restricted areas, which allow any vessel that needs to transit the restricted areas to do so if the operator of the vessel obtains permission from Little Creek Port Control or the Commanding Officer, JEBLCFS, and/or other persons or agencies as he/she may designate.

##### b. Impact on Small Entities.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Corps certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the restricted areas may be small entities, for the reasons stated in paragraph (a) above this rule would not have a significant economic impact on any vessel owner or operator. In addition, the restricted areas are necessary to protect vessels and personnel assigned to JEBLCFS by implementing a waterside security program. Small entities can also utilize navigable waters outside of the restricted areas. Small entities that need to transit the restricted areas may do so as long as the operator of the vessel obtains permission from Little Creek Port Control or the Commanding Officer, JEBLCFS, and/or other persons or agencies as he/she may designate. The restricted areas are necessary for security of JEBLCFS. Unless information is obtained to the contrary during the comment period, the Corps expects that the economic impact of the proposed restricted areas would have practically no impact on the public, any anticipated navigational hazard or interference with existing waterway traffic. After considering the economic

impacts of this restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.305 to read as follows:

§ 334.305 Little Creek Harbor, Fisherman's Cove, Joint Expeditionary Base Little Creek-Fort Story, Little Creek, Virginia, Restricted Areas.

(a) The Little Creek Restricted Areas. The Little Creek Restricted Areas consist of two distinct areas: The Outer Harbor Restricted Area and the Inner Harbor Restricted Area. The datum for the coordinates in this section is NAD-83.

(1) The Outer Harbor Restricted Area. The waters within an area beginning at a point on shore at latitude 36°55'57.7" N, longitude 76°10'35" W; thence southwesterly to a point on the opposite shore at latitude 36°55'53" N, longitude 76°10'44" W, thence southerly to latitude 36°55'21.2" N, longitude 76°10'42" W; thence southwesterly to latitude 36°55'17.8" N, longitude 76°10'49" W; thence northwesterly to a point in Fisherman's Cove at latitude 36°55'22" N, longitude 76°11'15.5" W; thence southerly to latitude 36°55'19.2" N, longitude 76°11'16" W, thence easterly along the southern shoreline of Fisherman's Cove, to latitude 36°55'15.8" N, longitude 76°10'58.8" W; and ending at latitude 36°55'18" N, longitude 76°10'30" W; thence to the point of origin.

(2) The Inner Harbor Restricted Area. The waters within Little Creek Harbor south of a line beginning at latitude 36°55'15.8" N, longitude 76°10'58.8" W; and ending at latitude 36°55'19.3" N, longitude 76°10'29.5" W.

(b) The Regulations. (1) All vessels intending to transit inbound/outbound of the Little Creek Restricted Areas shall notify the Little Creek Port Control of their destination and intentions.

(2) The Outer Harbor Restricted Area. All privately owned vessels properly registered and bearing identification in accordance with Federal and/or State laws and regulations, and all Government owned vessels (public vessels) may enter or exit the waters described in paragraph (a)(1) of this section at any time and transit inbound/outbound of the marked dredged channel leading to Little Creek Harbor between jetties 8 miles westward of Cape Henry Light. All vessels entering or exiting the channel must notify Little Creek Port Control using VHF-FM channel 12, stating their destination/intention. All vessels transiting inbound/outbound of the channel except as noted in paragraph (c)(2) of this section shall proceed at speeds commensurate with minimum wake unless approved by Little Creek Port Control

(3) The Inner Harbor Restricted Area. Vessels or persons intending to transit inbound/outbound within the waters described in paragraph (a)(2) of this section shall request permission from Little Creek Port Control with the exception of those listed in paragraph (c)(2) of this section. This permission shall suffice for Outer Harbor notification. The Inner Harbor Restricted Area is restricted to those privately owned vessels or persons calling upon the commercial/private piers located within the Inner Harbor and Government owned vessels (public vessels) transiting to and from U.S. Navy or U.S. Coast Guard facilities, and authorized Department of Defense patrons of the U.S. Navy recreational marina. No other



vessels or persons may enter or exit this area unless specific authorization is granted by Commanding Officer, Joint Expeditionary Base Little Creek-Fort Story, and/or other persons or agencies as he/she may designate.

(4) All vessels or persons transiting inbound/outbound of the Outer and Inner Harbor restricted areas are subject to all applicable federal and state laws including laws or regulations designed to protect the naval facility, and persons or vessels assigned therein. Federal and State law enforcement officials may at any time take action to ensure compliance with their respective laws. In addition, this regulation authorizes Navy security personnel, designated by Commander, Joint Expeditionary Base Little Creek-Fort Story or persons authorized to act in his/her behalf, the authority to ascertain the identity and intent of any vessels and/or persons transiting the restricted area that indicate by way of appearance or action they are a possible threat to government assets. If a determination is made that the vessel and/or persons are a threat to government assets located within the restricted area, Navy security units may take actions as provided by law or regulation that are deemed necessary to protect government personnel and assets located within the restricted area.

(c) Enforcement. (1) The regulations in this section shall be enforced by the Commanding Officer, Joint Expeditionary Base Little Creek-Fort Story and/or persons or agencies as he/she may designate.

(2) Federal and State Law enforcement vessels and personnel may enter anywhere in the restricted area at any time in the operation of their statutory missions or to enforce their respective laws.

(3) Nothing in this regulation is deemed to preempt 33 CFR 165.501.

(4) Vessels or persons calling upon the commercial/private piers located within the Inner Harbor with proper identification and clearance will be allowed entry subject to the same provisions described in paragraph (b) of this section. Commander, Joint Expeditionary Base Little Creek-Fort Story reserves the right to temporarily deny entry in emergency situations, elevated Department of Defense Force Protection conditions in the Harbor, or other safety of navigation constraints.

Dated: May 11, 2018

Thomas P. Smith

Chief, Operations and Regulatory Division

Directorate of Civil Works

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